



## McGeorge Law Review

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Volume 25 | Issue 2

Article 34

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1-1-1994

# Torts

University of the Pacific; McGeorge School of Law

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### Recommended Citation

University of the Pacific; McGeorge School of Law, *Torts*, 25 PAC. L. J. 827 (1994).

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# Torts

## Torts; stalking

Civil Code § 1708.7 (new).

AB 1548 (Alpert); 1993 STAT. Ch. 582

Existing law recognizes the crime of stalking.<sup>1</sup> Existing law also provides for punitive damages,<sup>2</sup> in addition to actual damages,<sup>3</sup> in civil cases where the defendant has found guilty of oppression,<sup>4</sup> fraud<sup>5</sup> or malice.<sup>6</sup>

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1. CAL. PENAL CODE § 646.9(a) (West Supp. 1993); *see id.* (defining the crime of stalking as willfully, maliciously, and repeatedly following or harassing another person and making a credible threat with the intent to place that person in reasonable fear of death or great bodily injury or the reasonable fear of death or great bodily injury to his or her immediate family). *See generally* Kelli L. Attinello, Comment, *Anti-Stalking Legislation: A Comparison of Traditional Remedies Available for Victims of Harassment Versus California Penal Code Section 646.9*, 24 PAC. L.J. 1945 (1993) (analyzing traditional remedies for victims of harassment, explaining California Penal Code § 646.9, and discussing the validity of various arguments made against California Penal Code § 646.9); Matthew J. Gilligan, Note, *Stalking the Stalker: Developing New Laws To Thwart Those Who Terrorize Others*, 27 GA. L. REV. 285 (1992) (addressing recent legislation designed to offer relief to victims who are harassed, followed, or threatened by other persons).

2. *See* CAL. CIV. CODE § 3294(a) (West Supp. 1993) (defining exemplary damages as damages awarded for the sake of example and by way of punishing the defendant); *see also* *Dyna-Med, Inc. v. Fair Employment & Hous. Comm'n*, 43 Cal. 3d 1379, 1387, 743 P.2d 1323, 1327, 241 Cal. Rptr. 67, 70-71 (1987) (suggesting that punitive damages are not highly favored by courts and that they should be granted with a great deal of caution); *Ford Motor Co. v. Home Ins. Co.*, 116 Cal. App. 3d 374, 379, 172 Cal. Rptr. 59, 62-63 (1981) (declaring that the primary function of punitive damages is to deter the defendant and others from engaging in the wrongful conduct); *Fletcher v. Western Nat'l Life Ins. Co.*, 10 Cal. App. 3d 376, 405, 89 Cal. Rptr. 78, 96 (1970) (upholding the constitutionality of exemplary damages).

3. *See* CAL. CIV. CODE § 3281 (West 1970) (providing for monetary compensation from the defendant in a civil action based upon his or her unlawful act or omission which caused the plaintiff to suffer detriment); *see also id.* § 3282 (West 1970) (defining detriment as a loss or harm suffered in person or property); *id.* § 3333 (West 1970) (providing that unless otherwise provided for, the measure of such damages is the amount which will compensate for all the detriment proximately caused by the defendant's conduct, regardless of whether it could have been anticipated); *Carr v. Progressive Casualty Ins. Co.*, 152 Cal. App. 3d 881, 892, 199 Cal. Rptr. 835, 841-42 (1984) (holding that actual damages are not necessarily a prerequisite to an award for punitive damages).

4. *See* CAL. CIV. CODE § 3294(c)(2) (West Supp. 1993) (defining oppression as despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of the rights or safety of others); *see also J.R. Norton Co. v. General Teamsters*, 208 Cal. App. 3d 430, 444, 256 Cal. Rptr. 246, 254 (1989) (suggesting that oppression may be inferred from the circumstances of a defendant's conduct).

5. *See* CAL. CIV. CODE § 3294(c)(3) (West Supp. 1993) (defining fraud as an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury); *see also Fletcher*, 10 Cal. App. 3d at 405, 89 Cal. Rptr. at 96 (defining fraud as an instance or act of trickery or deceit especially when involving a misrepresentation designed to persuade another to rely by parting with some valuable thing or to give up a legal right).

6. CAL. CIV. CODE § 3294(a) (West Supp. 1993); *see id.* § 3294(c)(1) (West Supp. 1993) (defining malice as conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard for the rights or safety of others); *see also Norton*, 208 Cal. App. 3d at 444, 256 Cal. Rptr. at 254 (describing malice as a wrongful intent to vex or annoy

Chapter 582 creates the tort of stalking defined as engaging in a pattern of conduct with the intent to follow, alarm, or harass the plaintiff.<sup>7</sup> Such conduct must cause the plaintiff to reasonably fear for his or her safety, or the safety of an immediate family member.<sup>8</sup> Chapter 582 provides that the plaintiff is required to support the allegations with independent corroborating evidence.<sup>9</sup>

Chapter 582 also provides that the plaintiff must prove either: (1) That the defendant made a credible threat<sup>10</sup> with the intent to cause the plaintiff fear for his or her safety or that of the plaintiff's immediate family and that at least once the plaintiff clearly demanded that the

and indicating that malice may be inferred from the circumstances of a defendant's conduct).

7. CAL. CIV. CODE § 1708.7(a)(1) (enacted by Chapter 582).

8. *Id.* § 1708.7(a)(2) (enacted by Chapter 582); *see id.* (defining immediate family member as a spouse, parent, child, any person related by consanguinity or affinity within the second degree who resides in the plaintiff's household, or any person who regularly resides, or within the six months preceding any portion of the pattern of conduct, regularly resided in the plaintiff's household); *see also* ASSEMBLY FLOOR, ANALYSIS OF AB 1548, at 2 (May 28, 1993) (noting that the current remedies in tort are insufficient to encompass the activities which constitute stalking because a stalker is unlikely to batter or assault the stalking victim, invasion of privacy tends to deal solely with publication or defaming the stalking victim and, finally, an action for intentional infliction of emotional distress is unlikely to be successful since there must be an extreme or outrageous act which most stalkers are not inclined to perform); *cf.* *Studley v. Benicia Unified Sch. Dist.*, 230 Cal. App. 3d 454, 457, 281 Cal. Rptr. 631, 632-33 (1991) (providing an example of a woman eventually killed by her boyfriend who objected to her dating other men and, accordingly, engaged in activity very similar to that described in Chapter 582 as stalking and demonstrating that a common means of recovery is to sue the perpetrator for intentional infliction of emotional distress if the behavior was extreme enough to fulfill the elements of the tort, or to bring suit against a third party who might have offered protection against such a violent outcome); *Riss v. New York*, 240 N.E.2d 860, 861 (N.Y. 1968) (providing an example of stalking behavior wherein an attorney terrorized his ex-girlfriend with veiled threats and persistent harassment and demonstrating that since she was unable to secure a remedy for his harassing behavior while it occurred, she attempted, and failed, to obtain a judgment against the municipality for failing to protect her when his behavior culminated in hiring someone to throw lye in her face, causing severe and permanent damage to her person). *See generally* Scott Armstrong, *States Crack Down on 'Stalking'*, CHRISTIAN SCI. MONITOR, May 19, 1993, at 7 (reporting recent state efforts to address the growing problem of stalking); Kevin Fagan, *New Focus On Deadly Stalkers*, S.F. CHRON., Jan. 11, 1993, at A1 (discussing the recent shooting of Yon Soon Choe by her husband who had stalked her and the recent state legislative efforts to hinder stalkers); David Holmstrom, *Efforts To Protect Women From "Stalkers" Gain Momentum At State, Federal Levels*, CHRISTIAN SCI. MONITOR, Dec. 22, 1992, at 1 (discussing a congressional plan for a federal anti-stalking law and recent state anti-stalking laws); Ed Mendel, *Alpert Bill Aims To Deter "Stalking" Abortion Protests*, S.D. UNION-TRIB., Mar. 9, 1993, at A3 (reporting that Chapter 582 may be used by the targets of abortion protesters and thus serve as a deterrent against lawful protests that "go too far"); Rene Riley-Adams, *Can Laws Stop the Obsessed?*, THE TIMES, Feb. 22, 1993, at 3 (discussing the stalking phenomenon and the criminal penalties imposed in the 31 states which have adopted such legislation).

9. CAL. CIV. CODE § 1708.7(a)(1) (enacted by Chapter 582).

10. *See id.* § 1708.7(a)(3)(A) (enacted by Chapter 582) (defining credible threat as a verbal or written threat or a threat implied by a pattern of conduct made with the intent and apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of an immediate family member); *see also* SENATE COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 1548, at 3-4 (July 6, 1993) (noting that it is the intent of the Legislature that the defendant also possess the apparent ability to carry out the threat since to provide otherwise would create a broader base for liability, and that without the apparent ability to carry out the threat, a plaintiff can have no reasonable fear or apprehension).

defendant desist such conduct and that despite this demand the defendant persisted in the threatening conduct; or (2) that the defendant violated a restraining order prohibiting the type of behavior subsequently displayed by the defendant.<sup>11</sup>

Under Chapter 582, one who commits the tort of stalking is liable to the plaintiff for general, special, and punitive damages as provided by law.<sup>12</sup> The court may grant equitable relief including, but not limited to, an injunction.<sup>13</sup>

Chapter 582 provides that this law should not be read as impairing constitutionally protected activities such as speech, protest, or assembly.<sup>14</sup>

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11. CAL. CIV. CODE § 1708.7(a)(3) (enacted by Chapter 582).

12. *Id.* § 1708.7(b) (enacted by Chapter 582); *see* ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1548, at 2 (May 28, 1993) (proposing that giving the victim of a stalker the opportunity to seek damages and other relief creates a threat of considerable financial loss which may deter stalkers).

13. CAL. CIV. CODE § 1708.7(c) (enacted by Chapter 582); *see id.* § 1708.7(d) (enacted by Chapter 582) (providing that the rights and remedies provided for are cumulative and in addition to any other rights and remedies provided by law); ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1548, at 2 (May 28, 1993) (discussing the recent growth of violent stalking incidents and the large group of victims, mostly women and children, who do not benefit from the presently available remedies of criminal prosecution and restraining orders and declaring that the purpose of the legislation is to protect the interest of a person to be free from a "calculated course of conduct" that reasonably causes the person to fear for his or her safety or that of an immediate family member).

14. CAL. CIV. CODE § 1708.7(e) (enacted by Chapter 582).

